

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 31-502.1

Specific Purpose:

This section is amended to provide clarification by adding the terms "child welfare agency" to the current language of the regulation.

Factual Basis:

This amendment is necessary in order to clarify that the child welfare services (CWS) agency within a county is responsible to generate a referral and respond as described in Section 31-101. The responsibility does not lie with another agency in that county.

Current Section 31-502.11

Specific Purpose:

This section is repealed to provide clarity by eliminating incorrect and redundant language.

Factual Basis:

The information in this repealed section incorrectly provides that when a county child welfare agency finds an allegation to be inconclusive, it must complete the Department of Justice (DOJ) reporting requirements as described in Section 31-501. This requirement was deleted as a result of enactment of Assembly Bill (AB) 717 (2011), which requires reporting to the DOJ only for substantiated reports. This requirement already exists in section 31-501 and is therefore redundant.

New Section 31-502.11

Specific Purpose:

This new language is adopted from current Handbook section 31-502.111 and inserted into new Section 31-502.11.

Factual Basis:

This Handbook provision was upgraded to regulations because this language is clarifying in describing the term “learn” that appears in Section 31-502.1. Additionally, subsection numbering “(a)” is removed from handbook because there is only one paragraph in this handbook; therefore, it does not require numbering.

Current Handbook Section 31-502.111

Specific Purpose/Factual Basis:

Specific Purpose and Factual Basis provided in new Section 31-502.11

Section 31-502.12

Specific Purpose:

This requirement was previously contained in current Section 31-502.31 and is rewritten and relocated to this new section.

Factual Basis:

The requirement is rewritten in order to better administer W&I Code section 10850.4(a), which is paraphrased in Section 31-502.2 for the purpose of providing county CWS agencies instruction for reporting to California Department of Social Services (CDSS) child fatalities that are the result of abuse and/or neglect. Section 31-502.2 is cross referenced in current Section 31-502.31 for the purpose of providing counties with instructions for releasing, upon public request, basic information regarding a child fatality that was suspected to be the result abuse and/or neglect. However, rather than cross reference Section 31-502.2 and, thereby, paraphrase W&I Code section 10850.4(a), the new language directly cites the statute, and the statute is provided in new Handbook section that follows new Section 31-502.122 for better clarity. This requirement is relocated to new Section 31-502.12 in order to provide a more logical flow of operations when there is a child fatality that was the result of abuse and/or neglect. County disclosure requirements for a child fatality that was suspected to be the result of abuse and/or neglect operationally proceeds county requirements to report and disclose when the child fatality is no longer suspected, but rather, has been determined to be the result of abuse and/or neglect.

Section 31-502.122

Specific Purpose:

This section is adopted in order to provide an exception regarding jurisdictional responsibilities when a child is injured in one county but subsequently dies of that injury after being relocated to a different county.

Factual Basis:

The W&I Code section 10850.4(j) requires a county to report to CDSS every child fatality that occurred within its jurisdiction that was the result of abuse or neglect. This requirement is highly problematic in the case of a county which hosts a children's intensive care unit (ICU) and receives injured child patients from bordering counties that lack those facilities. In cases where the transported child dies, there has been confusion over whether the county where the hospital is located must comply with the reporting and disclosure requirements of W&I Code section 10850.4, despite the fact that the county where the abuse and/or neglect occurred would have in its possession the records that are subject to disclosure under that statute. This is especially problematic because the county CWS agency or other county agencies where the hospital is located do not conduct the investigation, rather, it is typically conducted by the county in which the child resided and in which the abuse and/or neglect occurred. Additionally, when the county of residence conducts the investigation, it has immediate access to juvenile case records, and will typically have an established relationship with partnering agencies involved with the investigation, such as law enforcement. The county hosting the hospital does not have such access to case file information and typically will not have a relationship with the law enforcement agency from the county of the child's residence, which makes reporting and disclosure requirements a particular challenge and undue workload impact for the county hosting the hospital in which the child died. This regulation is necessary in order to ensure that child fatality disclosure responsibilities apply to the county that is responding to and investigating the alleged abuse or neglect that led to the child's death.

An additional rationale for this regulation is that requiring the county hosting the hospital to report the death to CDSS misrepresents the numbers of deaths recorded for each county by inflating the number of deaths that occur in counties that have intensive pediatric medical facilities. This hinders the Department's ability to track child death statistics statewide and results in inaccurate data being provided to the media and general public, who obtain child death information according to the provisions of Section 31-502. The result is inflated child death statistics in counties that host a central children's ICU and a misrepresentation of child death statistics for neighboring counties.

For the proper administration of W&I Code section 10805.4, it is important that county in which the abuse or neglect occurred, which resulted in the child fatality, report the death to CDSS and to disclose required findings and information, upon public request, on behalf of both counties. For all these reasons, the exception granted by Section 31-502.122 must be added to regulations.

Handbook Section 31-502.122

Specific Purpose:

This Section is added in order to provide cross reference to W&I Code sections 10850.4(a)(1-4).

Factual Basis:

This section is added in order to promulgate W&I Code sections 10850.4(a)(1-4), which provide the specific information required for disclosure by a county CWS agency when there is a public request for records per Section 31-502.12 regarding a child fatality that was suspected to be the result of abuse and/or neglect. Inclusion of these provisions will enable county CWS agencies to know what information must be disclosed without having to refer to other informational sources such as a code book.

Section 31-502.13

Specific Purpose:

This section is adopted in order to provide clarity by stating the conditions under which a child fatality is the result of abuse and/or neglect. It clarifies that this determination shall be made under either of two conditions: 1) abuse and/or neglect are the sole cause of the child fatality or 2) it was a material contributing factor. It also cross references the Penal Code (PC) section 11165.6 definition of "abuse and/or neglect."

Factual Basis:

This regulation is necessary in order to comply with the California Superior Court decision in *Butterfield v. Lightbourne*. The Department previously interpreted W&I Code section 10850.4(b), which requires disclosures when abuse or neglect "leads to" a child fatality, by using the phrase in the MPP section 31-502.2 "the child fatality was the result of abuse and/or neglect." The term "result of" was invalidated in *Butterfield* because the Department's regulations narrowed the threshold for disclosure that is set forth in statute. In order to alleviate this discrepancy and comply with the court decision, Section 31-502.13 clarifies that disclosure is required where abuse and/or neglect was either a sole cause or a "material contributing factor" in the child's death. This change will ensure disclosure in situations in which a child dies of more than one cause, where one of those causes is abuse and/or neglect. This change will allow CDSS to better operationalize the "led to" standard for disclosure as provided in law.

Section 31-502.131

Specific Purpose:

This section is adopted in order to clarify the circumstances that suffice for abuse and/or neglect to have been a "material contributing factor" to a child's death. It reiterates that abuse and/or neglect does not have to be the sole contributing factor in a child's death in order to make a determination that it was a material contributing factor. Conversely, it also clarifies that a determination that abuse and/or neglect was present, in and of itself, does not suffice as grounds that the abuse and/or neglect was a material contributing factor in the child's death. Rather, a county CWS agency must be able to conclude 1) that an agency described in Section 31-502.14 determined that abuse and/or neglect contributed to the

child's death and 2) that it was more than inconsequential or incidental in contributing the causes of the child's death.

Factual Basis:

This section is necessary in order to meet the conditions of the California Superior Court decision in *Butterfield v. Lightbourne* and to provide clarification on what the "material contributing factor" test means and how to apply it. This section is necessary in order to establish structure to the determination of whether abuse and/or neglect was a material contributing factor in a child's death. The language is critical because it will provide needed assistance to county child welfare agencies that are eligible to determine whether or not the circumstances of the child's death meet the threshold to prompt public disclosure of findings and otherwise confidential information regarding the deceased child and the perpetrator of the child's death. For the remainder of this Initial Statement of Reasons, the terms "result of," "resulted in" or any other variation of such terms shall be understood to include "material contributing factor."

Handbook Section 31-502.13

Specific Purpose:

This section is added in order to provide the text of PC section 11165.6, which is cross referenced in previous Section 31-502.13.

This section also provides the text of the federal Child Abuse Prevention and Treatment Act, which governs States' responsibilities to disclose findings and information regarding child fatality cases.

Factual Basis:

This addition is necessary in order to adequately provide reference to the PC definition of "child abuse or neglect," which in turn is necessary to promulgate W&I Code section 10850.4(K)(1), which governs the circumstances that prompt public disclosure of juvenile case file information. Inclusion of these provisions will enable county CWS agencies to know what information must be disclosed without having to refer to other informational sources such as a code book.

This section is also added in order to inform those responsible for the administration of child fatality disclosure, as well as the public, that federal law (the Child Abuse and Prevention and Treatment Act) also imposes disclosure requirements that are consistent with State law. Inclusion of these provisions will enable county case workers to know what information must be disclosed without having to refer to other informational sources such as a code book.

Section 31-502.14

Specific Purpose:

This section is adopted in order to describe the three entities eligible to make a determination that abuse and/or neglect resulted in a child's death: 1) law enforcement, 2) a coroner or medical examiner and/or 3) a county CWS agency, each according to the provisions of cross referenced Section 31-502.13.

Factual Basis:

This adoption is necessary in order to promulgate W&I Code section 10850.4(b), which identifies the three entities listed above as eligible to determine whether child abuse and/or neglect has resulted in the death of a child. This clarification is removed from Sections 31-502.251 through .253 and must be reintroduced in this section in order to most effectively promulgate statute. This regulation is moved to an earlier section in order to maintain a more logical flow of procedures. Prior to reporting a child fatality to CDSS pursuant to Section 31-502.2, a county CWS agency must make the determination that a child death was the result of abuse and/or neglect. Accordingly, it is more logical to place requirements and clarifications related to such a determination prior to the subsequent requirements for reporting the determination to CDSS.

Section 31-502.15

Specific Purpose:

This section is adopted in order to clarify reporting and disclosure requirements for situations in which there may be multiple causes that contributed to the death of a child and one of those causes is abuse and/or neglect. If abuse and/or neglect were one of the causes, the county CWS agency is required to report the child fatality to CDSS and disclose juvenile case file findings and information upon public request.

Factual Basis:

This section is necessary in order to meet the conditions of the California Superior Court decision in *Butterfield v. Lightbourne*. See Factual Basis for Section 31-502.13 for further information on this court decision and the implementation of the "material contributing factor" standard. This provision will ensure that county CWAs will meet the disclosure requirements contained in W&I Code section 10850.4 in cases where a child died from multiple causes, where one of those causes was abuse and/or neglect.

Section 31-502.16

Specific Purpose:

This section is adopted in order to clarify that although three entities – law enforcement, the coroner or medical examiner and the county CWS agency – are eligible to determine

whether abuse and/or neglect resulted in a child's death, a situation involving conflicting determinations from two or more agencies does not negate the county CWS agency responsibility to report the child fatality to CDSS and disclose juvenile case file findings and information. Rather, the determination by any of the three entities prompts disclosure, regardless of a conflicting finding by one of the other entities.

Factual Basis:

This section is necessary in order to promulgate and clarify W&I Code section 10850.4(b), which states that all cases in which child abuse and/or neglect led to a child's death are subject to disclosure if any of the three previously mentioned entities determine that abuse and/or neglect led to the child's death. It contains no provision that negates disclosure if two or more of the three entities have conflicting findings. This section will avoid possible confusion over whether disclosure rules apply when an agency eligible to determine whether a child died from abuse and/or neglect reaches a determination which is inconsistent with a determination from another agency.

Section 31-502.2

Specific Purpose:

This section is amended by adding the terms "child welfare agency" in order to clarify that the county child welfare agency is responsible to comply with this code section. The terms "using the SOC 826 form" are added to specify the form number for reporting child fatalities to CDSS. The terms "resulted in the child fatality pursuant to Sections 31-502.13 through 31-502.16" are added to cross reference Sections 31-502.13 through .16, which clarify the conditions under which a county is required to report a child fatality to CDSS.

Factual Basis:

This amendment is necessary in order to clarify three items. First, the CWS agency within a county is responsible to submit a report to the CDSS; the responsibility does not lie with another agency in that county. Second, the county CWS agency must use the SOC 826 form when submitting this report; no other form or substitute shall be submitted in its place. Third, the county CWS agency's responsibility to report a child fatality to CDSS is contingent upon the provisions of Sections 31-502.13 through .16. Because Sections 31-502.13 through .16 are new code sections, this cross reference is necessary in order to ensure their provisions are followed in the course of reporting child fatalities to CDSS.

Section 31-502.23

Specific Purpose:

This section is amended by adding the terms "and at the time of the abuse and/or neglect occurred" in order to differentiate between the residence at the time of a child's death as opposed to the residence at time of injury. The terms "resulted in the child fatality pursuant to Sections 31-502.13 through 31-502.16" are added to cross reference Sections 31-502.13

through .16 because these sections clarify the conditions under which a county is required to report a child fatality to CDSS.

Factual Basis:

This amendment is necessary in order to ensure that the department receives necessary information concerning the child's residence when the abuse or neglect occurred that led to the child's death, as well as where the child resided at the time of death. This information will enable the department to assess county compliance with Sections 31-502.122 and 31-502.26. Given that children may die in a hospital setting, this information will allow the department to identify the county in which the child was abused or neglected. Given that abused or neglected children are placed in foster care, and may die while in foster care from injuries sustained prior to their placement in foster care, this information will also allow the department to identify these situations. This information will allow for compliance with W&I Code section 10850.4(2)(c), which requires disclosure of specified documents when a child fatality occurred and the child resided with a parent or guardian, as opposed to section 10850.4(c)(3), which requires disclosure when a child resided in foster care. Because both sections call for the disclosure of different types of records, the child's residence at time of injury versus time of death is critical in ensuring the correct disclosures and to prevent the release of documents otherwise protected by state or federal law pursuant to W&I Code section 10850.4(e)(1)(C). The second amendment is necessary because the county CWS agency's responsibility to report is contingent upon the provisions of Sections 31-502.13 through .16. Because 31-502.13 through .16 are new code sections, this cross reference is necessary in order to ensure their provisions are followed in the course of reporting child fatalities to CDSS.

Section 31-502.232

Specific Purpose:

This section is amended by correcting the format of the original regulation, which should have been written such that the referenced Sections 31-002(g)(3) and (p)(1) appear in alphabetical order.

Factual Basis:

This amendment is necessary in order to keep the section in conformity with Department formatting, which references sections of code and regulation in order of the least to the most prominent and in alphabetical order; ex: 1) county letter or notice, 2) state regulation, 3) state law and 4) federal law.

Section 31-502.232(a)

Specific Purpose:

This section is adopted to clarify that the term "guardian" shall include an adult with whom the child resides and who functions as a putative parent or guardian for the child.

Factual Basis:

This section is necessary because in past situations the department is aware of confusion in cases where a child died as a result of abuse and/or neglect while living with a parent or someone who is serving as if they were a guardian or the child, but neither a parent nor a legal guardian was the perpetrator of abuse and/or neglect that caused the child fatality. The department has encountered situations in which a parent or guardian has agreed to leave a child in the care of a third party on an extended basis without the formalities of establishing guardianship. The third party care giver acts as if they were a legal guardian, without formally establishing that status. The county CWS agency may have juvenile case file information regarding a person acting as a guardian who is alleged to be a perpetrator or abuse or neglect; however, in previous regulations it was not clear whether or not the county CWS agency was required to disclose findings and information on this person. The California Superior Court decision in *Butterfield v. Lightbourne* clarified that while W&I Code section 10850.4(c) indicates documents to be released, differing based on whether the child resided with a parent/guardian or with a foster care provider, the code section does not indicate that a county CWS agency must release findings and information exclusively regarding a parent, legal guardian or foster care provider. Rather, the decision clarifies that a county CWS agency must release any juvenile case file records on the perpetrator of abuse and/or neglect that resulted in the death of the child, regardless of the perpetrator's relation to the child. This regulation will ensure the absence of the legal status as guardian for an alleged perpetrator who is actually serving as if they are a guardian will not result in a failure to make appropriate disclosures.

Section 31-502.24

Specific Purpose:

This section is amended to provide clarity by adding the terms "or has been conducted" to clarify that the SOC 826 form submitted to CDSS by a county CWS agency shall be completed to indicate not only whether there is a current law enforcement investigation but also whether there has been such an investigation in the past.

Factual Basis:

This amendment is necessary in order to clarify the statutory requirement pursuant to W&I Code section 10850.4(a)(4) for counties to report whether a child death is being investigated by law enforcement. The CDSS believes the intent of the statute was for county CWS agencies to report whether an investigation has been opened for the child's death, which would include an on-going investigation and/or an investigation that has already concluded.

Section 31-502.25

Specific Purpose:

This section is amended to provide clarity by adding the terms "pursuant to Sections 31-502.13 through 31-502.16" in order to cross reference Sections 31-502.13 through .16, which clarify the conditions under which a county is required to report a child fatality to CDSS.

Factual Basis:

This amendment is necessary because the county CWS agency's responsibility to report a child fatality to CDSS is contingent upon the provisions of Sections 31-502.13 through .16. Because Sections 31-502.13 through .16 are new code sections, this cross reference is necessary in order to ensure their provisions are followed in the course of reporting child fatalities to CDSS.

Sections 31-502.251 through .253

Specific Purpose:

These sections are repealed and rewritten. They have been renumbered and relocated to new Sections 31-502.13 through .16.

Factual Basis:

These amendments are necessary to provide a more logical flow of procedures. The current language of these sections addresses the determination by a county CWS agency, law enforcement or the coroner/medical examiner that abuse and/or neglect resulted in the death of a child. Sections 31-502.13 through .16 clarify the conditions that warrant a determination that abuse and/or neglect resulted in the death of a child, and this procedure precedes any procedures that involve reporting the death to CDSS. Accordingly, it is necessary to remove such provisions from Section 31-502.2 and relocate them to Sections 31-502.13 through .16.

Current Handbook Section 31-502.254

Specific Purpose:

This handbook section is repealed in order to remove language not pertinent to its corresponding regulation, Section 31-502.25.

Factual Basis:

This handbook section is repealed because the cross referenced PC section 11165.12(b) describes a "substantiated" report. This information is not reasonably related to issues MPP section 31-502.25 was intended to address, namely, to identify the entities that are

authorized to make determinations of whether a child fatality was or was not the result of abuse or neglect.

Section 31-502.26

Specific Purpose:

This section is added in order to **provide an exception** regarding jurisdictional responsibilities when a child is injured in one county but subsequently dies of that injury after being relocated to a different county.

Factual Basis:

Justification provided in Factual Basis for Section 31-502.122.

Current Section 31-502.3

Specific Purpose:

This section and its subsequent subsections are repealed, rewritten and expanded. They are renumbered and redistributed over eight subsections rather than five.

Factual Basis:

This section and its subsequent subsections are repealed in order to meet the conditions of the California Superior Court decision in *Butterfield v. Lightbourne*. Specifically, the current language of Section 31-502.33 states that a county CWS agency shall disclose specified documents when 1) a child fatality has been determined to be the result of abuse and/or neglect, 2) the child resided with his/her parent or guardian and 3) the abuse and/or neglect was inflicted by the parent or guardian. However, while W&I Code section 10850.4(c)(2) indicates specified documents to be disclosed when the child resided with a parent or guardian, it does not require that the abuse and/or neglect was inflicted by the parent or guardian in order to prompt disclosure. The same restriction was found problematic with Section 31-502.34 which, in similar fashion, requires disclosure when the fatal abuse and/or neglect was inflicted by the foster care provider. However, though W&I Code section 10850.4(c)(3) requires the disclosure of specified documents when a child resided in foster care, it does not require that the fatal abuse and/or neglect was inflicted by the foster care provider. The court decision found that conditioning the release of information upon the identity of the perpetrator is arbitrary and leads to inconsistencies in reporting. In order to address this provision of the court decision, it is necessary to remove regulatory language that problematically limits public disclosure to cases where a parent, guardian or foster care provider inflicted abuse and/or neglect that resulted in the death of a child. Accordingly, the language of Sections 31-502.33 and .34 are now replaced and expanded over Sections 31-502.31 through .37, which address seven frequent and/or complicated scenarios encountered by county CWS agencies and which prompt disclosure under the conditions of the court decision. These seven situations require clarification because of their frequency and/or level of complication as described in numerous cases by

county CWS agencies in the course of routine technical assistance provided by the Department since the 2008 implementation of Senate Bill (SB) 39, Chapter 468, Statutes of 2007. The language of the regulations now address child fatalities that are the result of abuse and/or neglect inflicted by a parent, guardian, foster care provider, other known individual, non-residential child care, an unidentified individual, or a combination thereof. This expansion is necessary in order to 1) indicate the situations that prompt public disclosure, 2) the appropriate individuals who are the subjects of disclosure in each instance and 3) which documents must be disclosed in each situation. This is a critical distinction that must be included in regulations because although, for example, disclosure may be prompted when a deceased child resided with a parent, if the parent did not cause or contribute to the abuse and/or neglect which resulted in the child's death, the county CWS agency must ensure confidentiality of case file information on that parent, because it is otherwise protected by state and federal law pursuant to W&I Code section 10850.4(n). Additionally, the requirement addressed in Section 31-502.35 is rewritten and relocated to new Section 31-502.38.

Section 31-502.3

Specific Purpose:

This section is adopted in order to explain the expanded format and content of the subsections that will follow within Section 31-502.3.

Factual Basis:

Because the content of the subsections following Section 31-502.3 are of such volume, it is necessary to describe their format and content in Section 31-502.3.

Section 31-502.31

Specific Purpose:

This section is adopted to provide clarification on the first of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect by a parent or guardian when the child was living with the parent or guardian. This section includes a cross reference to new Sections 31-502.13 through .16, which describe the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect, as well as the three agencies eligible to make such a determination. It also includes a cross reference to Section 31-502.232, which provides the definitions of "parent" and "guardian."

Factual Basis:

The language of new Section 31-502.31 must be adopted in order to administer W&I Code section 10850.4(c)(2), which requires the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided with a parent or guardian. It also functions to meet the disclosure requirements of the California Superior Court

decision in *Butterfield v. Lightbourne* (see Factual Basis for current Section 31-502.3 for further information on this court decision). New Sections 31-502.13 through .16 must be cross referenced because county CWS agencies must make a determination of child abuse and/or neglect prior to disclosing documents and, therefore, must be provided clarification on making such a determination. Section 31-502.232 must be cross referenced in order to provide definitions of "parent" and "guardian" because misinterpretation of such terms may result in disclosure of documents required for a different individual or circumstance described elsewhere within new Section 31-502.3 and/or may result in the unlawful disclosure of documents otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C).

Section 31-502.311

Specific Purpose:

This section is adopted to provide specific requirements for preparing documents for release pursuant to new Subsections 31-502.311(a-c) after a determination of abuse and/or neglect has been made pursuant to new Section 31-502.31 regarding a parent or guardian. The documents indicated in new Subsections 31-502.311(a-c) must be released 1) to the extent that they are in the possession of the county CWS agency, 2) as subject to redaction pursuant to new Section 31-502.4 and 3) within 10 business days of either a public request for records or receipt of a determination pursuant to new Sections 31-502.13 through .16, whichever is later.

Factual Basis:

This new language is necessary to describe the public disclosure required by the statutes discussed in this Factual Basis, promulgated in new Sections 31-502.311, .321, .331, .341, .351, .361 and .371. First, these new regulatory sections, consistent with W&I Code section 10850.4(o), limit the required disclosures to records that are in the possession of the county CWS agency. This limitation is currently addressed in Section 31-502.48 and is reintroduced in these new sections to inform county CWS agencies and the public of the limitation (see Factual Basis for new Sections 31-502.363, .332 and .342 regarding documents not contained in the juvenile case file). Second, these sections must cross reference Section 31-502.4 in order to inform county CWS agencies of the redaction requirements of W&I Code section 10850.4(e), preventing disclosure for individuals discussed in the deceased child's juvenile case file but who are otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C). This cross reference is carried over from repealed current Sections 31-502.33 and .34. Third, this section must require counties to release the documents indicated in the corresponding subsections within 10 business days in order to ensure the time frame required by W&I section 10850.4(d). This requirement is carried over from repealed current Sections 31-502.331 and .341. Finally, these sections must cross reference new Sections 31-502.13 through .16 in order to indicate the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect as well as the three agencies eligible to make such a determination.

Section 31-502.311(a)

Specific Purpose:

This section is adopted in order to provide county CWS agencies with the disclosure requirements of W&I Code section 10850.4(c)(2): All previous referrals of abuse and/or neglect of the deceased child while living with a parent or guardian. It also clarifies that any information that identifies a child victim other than the deceased shall be redacted.

Factual Basis:

This section is necessary in order to administer W&I Code section 10850.4(c)(2). This statutory requirement was previously addressed in current Section 31-502.331(c). Within this new Section it is also necessary to clarify that any information that identifies a child victim other than the deceased child must be redacted in order to protect the confidentiality rights of any child victim other than the deceased child. The exception of confidentiality that is applied to the deceased child pursuant to W&I Code section 10850.4 does not extend to other child victims.

Section 31-502.311(b)

Specific Purpose:

This section is adopted in order to provide county CWS agencies with the disclosure requirements of W&I Code sections 10850.4(c)(2)(A-E) for cases where a child fatality was the result of abuse and/or neglect and the child resided with a parent or guardian. This new regulatory section cross references the new handbook section that follows new Section 31-502.311(c). This new handbook section directly cites W&I Code sections 10850.4(c)(2)(A-E).

Factual Basis:

This section is necessary in order to promulgate W&I Code sections 10850.4(c)(2)(A-E). This statutory requirement was previously addressed in the repealed language of current Sections 31-502.331(b) and (d-g).

Section 31-502.311(c)

Specific Purpose:

This section is adopted in order to provide county CWS agencies with the disclosure requirements of W&I Code sections 10850.4(c)(1), which cross references W&I Code section 10850.4(a)(1-4) for cases where a child fatality was the result of abuse and/or neglect and the child resided with a parent or guardian. This new regulatory section cross references new Handbook Section that follows new Section 31-502.122. This new handbook section directly cites W&I Code sections 10850.4(a)(1-4).

Factual Basis:

This addition is necessary in order to promulgate W&I Code sections 10850.4(c)(1). This statutory requirement was previously addressed in the repealed language of current section 31-502.331(a).

Section 31-502.32

Specific Purpose:

This section is adopted to describe the second of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect by a person other than the parent or guardian when the child was living with the parent or guardian and neglect by the parent or guardian contributed to the child's death. This section cross references new Sections 31-502.13 through .16 regarding abuse or neglect inflicted by someone other than the parent or guardian, Section 31-502.232 regarding a "parent or guardian," and new Section 31-502.14 regarding contributory neglect by a parent or guardian.

Factual Basis:

New Section 31-502.32 must be adopted in order to promulgate W&I Code section 10850.4(c)(2), requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided with a parent or guardian. It also functions to meet the disclosure requirements contained in the California Superior Court decision in *Butterfield v. Lightbourne* (see Factual Basis for current Section 31-502.3 for further information on this court decision).

The primary issue addressed by this regulation is presented in the following question: when a child residing in the home of a parent or guardian dies as a result of abuse and/or neglect inflicted by a third party (i.e. not inflicted by the parent or guardian), under what circumstances is it appropriate to disclose otherwise confidential, archived child welfare referrals involving that parent or guardian? The Stipulated Court Order in *Butterfield v. Lightbourne* provides that when neglect by the parent or guardian is a material contributing factor in the circumstances that resulted in the child's death, these disclosures are required.

New Section 31-502.32 must be differentiated from new Section 31-502.31. Although both sections require disclosure of specified documents when a child fatality that has been determined to be the result of abuse and/or neglect when the child resided with a parent or guardian, new Section 31-502.32 addresses cases where fatal abuse or neglect was inflicted by a person other than the parent or guardian but neglect by the parent or guardian was a material contributing factor in the circumstances resulting in the child fatality. See Factual Basis for new Sections 31-502.13 for further information regarding the definition and significance of abuse and/or neglect that was a "material contributing factor" in a child's death. New Sections 31-502.13 through .16 must be cross referenced in this section because county CWS agencies are one of three entities eligible to make a determination of child abuse and/or neglect prior to disclosing documents and, therefore, must be provided

clarification on making such a determination. Section 31-502.232 must be cross referenced in order to provide definitions of "parent" and "guardian" because misinterpretation of such terms may result in disclosure of documents required for a different individual or circumstance described elsewhere within Section 31-502.3 and/or may result in the unlawful disclosure of documents otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C). This section provides cross reference to new Sections 31-502.13 through .16 in order to provide direction as to which agencies are eligible to make a determination of whether the child's death was the result of abuse and/or neglect, as well as the guidelines by which a county CWS agency makes such a determination. Last, where the section discusses contributory neglect by a parent or guardian, it cross references new Section 31-502.14 in order to clarify the entities eligible to make a determination of neglect.

Section 31-502.321 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.321(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Sections 31-502.321(b) and (c) and Handbook

Specific Purpose/Factual Basis:

These sections are adopted to cross reference Sections 31-505.311(b) and (c) and provide the language in handbook.

Section 31-502.33

Specific Purpose:

This section is adopted in order to describe the third of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect by a child's foster care provider when the child resided in foster care. This Section includes cross reference to new Sections 31-502.13 through .16 which describe the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect, as well as the three agencies eligible to make such a determination. It also includes cross reference to Section 31-002(f)(8), which provides the definition of "foster care."

Factual Basis:

New Section 31-502.33 must be adopted in order to promulgate W&I Code section 10850.4(c)(3) requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided in foster care. It also functions to meet the disclosure requirements contained in the California Superior Court decision in *Butterfield v. Lightbourne*. New Sections 31-502.13 through .16 must be cross referenced because county CWS agencies are one of three entities eligible to make a determination of child abuse and/or neglect prior to disclosing documents and therefore must be provided clarification on making such a determination. Section 31-002(f)(8) must be cross referenced in order to provide definition of "foster care" because misinterpretation of such terms may result in disclosure of documents required for a different individual or circumstance described elsewhere within new Section 31-502.3 and/or may result in the unlawful disclosure of documents otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C).

Section 31-502.331 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.331(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Section 31-502.331(b) and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311(b) and provide the language in handbook.

Section 31-502.331(c) and Handbook

This section is adopted in order to provide county CWS agencies with the disclosure requirements of W&I Code sections 10850.4(c)(3)(A-C). This new regulatory section cross references the new Handbook section that follows new Section 31-502.331(e). This new Handbook section directly cites W&I Code sections 10850.4(c)(3)(A-C).

Factual Basis:

This section is necessary in order to promulgate W&I Code section 10850.4(c)(3). This statutory requirement was previously addressed in the repealed language of current Section 31-502.341(h) and (j-k).

The Handbook is necessary in order to provide clear reference to W&I Code sections 10850.4(c)(3)(A-C) for county CWS agencies in completing the responsibilities of new Sections 31-502.331(c) and .341(c). This statutory requirement was previously addressed in current sections 31-502.341(h) and (j-k).

Section 31-502.331(d) and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311(c) and provide the language in handbook.

Section 31-502.331(e)

Specific Purpose:

This section is adopted in order to provide county CWS agencies with the requirement to disclose records pertaining to the approval of the foster family home of the relative or non-relative extended family member, including a caregiver assessment, and health and safety inspection of the home if in case record.

Factual Basis:

This section is necessary in order to incorporate the language of current Section 31-502.341(i), which has been removed and the language has been transferred to New Sections 31-502.331(e) and .341(e) for organizational purposes.

Section 31-502.332

Specific Purpose:

This section is adopted in order to clarify disclosure procedures for W&I Code sections 10850.4(c)(3)(A-C) as promulgated in new Sections 31-502.331(c) and .341(c).

Factual Basis:

Each statutory section promulgated in this regulation states that the records shall be released by the county CWS agency "if in the case file." This section must be added to clarify that if such records are maintained by the county CWS agency, the agency must forward that part of the request to the custodian of records prior to disclosure. Otherwise, to ensure that requestors of child fatality records obtain information on where relevant records are located

the county CWS agency is required to refer the requesting party to the appropriate licensing/approval agency pursuant to W&I Code section 10850.4(o).

Section 31-502.333

Specific Purpose:

This section is adopted in order to clarify that the county CWS agency shall redact from any records released under this new section, in addition to the redactions indicated in Section 31-502.4, any information that would identify the child's parent or guardian, unless it was determined by an agency, pursuant to new Sections 31-502.13 through 31-502.16, that the parent or guardian inflicted abuse and/or neglect that resulted in the child's death.

Factual Basis:

This section is necessary in order to clarify and adequately promulgate W&I Code section 10850.4(c)(3), which requires the release of specific documents when a child resided in foster care. This statute cross references W&I Code sections 10850.4(c)(2)(A-E) in order to indicate that the documents listed shall be released regarding the child's foster care provider. However, prior to the cross reference the statute originally refers to disclosures for abuse and/or neglect inflicted by a parent or guardian. Therefore, this new section must be adopted to clarify that a county CWS agency must only disclose such records to the extent that they contain information regarding abuse and/or neglect by the foster care provider. This is a critical distinction because W&I Code section 10850.4(c)(3) refers to cases where a foster care provider, rather than a parent or guardian, was found to be responsible for abuse and/or neglect that resulted in the child fatality. Without such distinction, a county CWS agency runs the risk of unlawfully disclosing documents regarding the parent or guardian that are otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C). This regulation must be adopted to clarify that the only circumstance in which such records are released regarding the parent or guardian is when abuse and/or neglect by a parent or guardian also contributed to or resulted in the child's death.

Section 31-502.34

Specific Purpose:

This section is adopted in order to describe the fourth of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect by a person other than the child's foster care provider when the child resided in foster care, and there was contributory neglect by the foster care provider. This section cross references 1) new Sections 31-502.13 through .16 regarding abuse or neglect inflicted by someone other than the parent or guardian, 2) Section 31-502.232 regarding a "parent or guardian" and 3) new Section 31-502.14 regarding contributory neglect by a parent or guardian.

Factual Basis:

New Section 31-502.34 promulgates: W&I Code section 10850.4(c)(3) requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided in foster care. It also meets the expanded disclosure conditions of the California Superior Court decision in *Butterfield v. Lightbourne* (see Factual Basis for current Section 31-502.3 for further information on this court decision).

The primary issue addressed by this regulation is presented in the following question: when a child residing in foster care dies as a result of abuse and/or neglect inflicted by a third party (i.e. not inflicted by the foster care provider), under what circumstances is it appropriate to disclose an otherwise confidential, archived child welfare referrals involving that foster care provider? The Stipulated Court Order in *Butterfield* provides that when neglect by the foster care provider is a material contributing factor in the circumstances that resulted in the child's death, these disclosures are required.

New Section 31-502.34 must be differentiated from new Section 31-502.33. Although both sections require disclosure of specified documents when a child fatality has been determined to be the result of abuse and/or neglect when the child resided in foster care, new Section 31-502.33 addresses cases where fatal abuse or neglect was inflicted by a person other than the foster care provider but neglect by the foster care provider was a material contributing factor in the circumstances of the child fatality. See Factual Basis for new Section 31-502.13 for further information regarding the definition and significance of abuse and/or neglect that was a "material contributing factor" in a child's death. New Sections 31-502.13 through .16 must be cross referenced in this section because county CWS agencies are one of three entities eligible to make a determination of child abuse and/or neglect prior to disclosing documents and, therefore, must be provided clarification on making such a determination. Section 31-002(f)(8) must be cross referenced in order to provide definition of "foster care" because misinterpretation of such terms may result in disclosure of documents required for a different individual or circumstance described elsewhere within new section 31-502.3 and/or may result in the unlawful disclosure of documents otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C). Additionally, this section provides a cross reference to new Sections 31-502.13 through .16 in order to provide direction as to which agencies are eligible to make a determination of whether the child's death was the result of abuse and/or neglect, as well as the guidelines by which a county CWS agency makes such a determination. The section also cross references Section 31-502.232 in order to clarify the terms "parent or guardian." Last, where the section discusses contributory neglect by a parent or guardian, it cross references New Section 31-502.14 in order to clarify the entities eligible to make a determination of neglect.

Section 31-502.341 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.341(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Section 31-502.341(b) and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311(b) and provide the language in handbook.

Section 31-502.341(c) and Handbook

Specific Purpose/Factual Basis:

See new Section 31-502.331(c). Specific Purpose and Factual Basis are identical.

Section 31-502.331(d) and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311(c) and provide the language in handbook.

Section 31-502.341(e) and Handbook

Specific Purpose/Factual Basis:

See new Section 31-502.331(e). Specific Purpose and Factual Basis are identical.

Section 31-502.35

Specific Purpose:

This section is adopted in order to describe the fifth of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect by a person other than the parent, guardian or foster care provider has been determined or substantiated to have resulted in the child fatality and there is no determination of neglect by a parent, guardian or foster care provider. This section includes cross references to new Sections 31-502.13 through .16, which describe the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect as well as the three agencies eligible to make such a determination.

Factual Basis:

This section is necessary in order to effectively promulgate W&I Code section 10850.4(c), requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided with a parent, guardian or foster care provider. It also functions to meet the disclosure requirements contained in the California Superior Court decision in *Butterfield v. Lightbourne* (see Factual Basis for current section 31-502.3 for further information on this court decision). The court decision found that although statute indicates documents to be disclosed when a child resided with a parent, guardian or foster care provider, circumstances prompting disclosure are not limited to instances where the fatal child abuse and/or neglect was inflicted by such a person. However, while a case of fatal child abuse and/or neglect inflicted by a known person other than a parent/guardian/foster care provider falls within the scope of disclosures required by statute, the past child welfare referral history of the parent, guardian or foster parent are not relevant to the circumstances resulting in the child's death. Under these circumstances, there is no legitimate governmental or public purpose that would justify the disclosure of otherwise confidential referral history of the parent, guardian or foster parent. Rather, there is a legitimate public and governmental purpose in disclosing the referral history involving the perpetrator of the abuse or neglect that resulted in the child's death and this section requires these disclosures.

New Section 31-502.35 must be adopted in order to provide clear disclosure procedures when fatal child abuse was inflicted by a known person other than a parent, guardian or foster care provider, none of whom were found negligent nor contributed to the circumstances of the child's death. This circumstance must be distinguished from others in order to ensure that confidential information otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C) is not disclosed regarding the parent, guardian or foster care provider. Additionally, new Sections 31-502.13 through.16 must be cross referenced in this regulatory section because county CWS agencies must make a determination of child abuse and/or neglect prior to disclosing documents and, therefore, must be provided clarification on making such a determination.

Section 31-502.351 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.351(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Sections 31-502.351(b) and (c) and Handbook

Specific Purpose/Factual Basis:

These sections are adopted to cross reference Sections 31-505.311(b) and (c) and provide the language in handbook.

Section 31-502.352

Specific Purpose:

This section is adopted in order to clarify that the county CWS agency shall redact from any records released under new Section 31-502.351 and, in addition to the redactions indicated in new Section 31-502.4, any information that would identify the child's parent, guardian, or foster care provider.

Factual Basis:

This section is necessary in order to clarify and adequately promulgate W&I Code section 10850.4(c), which requires the release of specific documents when a child's death occurred while living with a parent, guardian or foster care provider. In the scenario presented by new Section 31-502.35, a known perpetrator other than a parent, guardian or foster care provider inflicted abuse and/or neglect that resulted in the child's death, prompting the disclosure of records specified in new Section 31-502.351. Because a parent, guardian or foster care provider is not the perpetrator in this case, it must be clarified that case records regarding such individuals shall not be released. This is a critical distinction because in this case, the parent, guardian or foster care provider was not found to be responsible for abuse and/or neglect that resulted in the child fatality. Without such distinction, a county CWS agency runs the risk of unlawfully disclosing documents regarding the parent, guardian or foster care provider that are otherwise protected under state and federal laws pursuant to W&I Code section 10850.4(e)(1)(C). Only information regarding abuse and/or neglect inflicted by the person responsible for the child's death shall be disclosed.

Section 31-502.36

Specific Purpose:

This section is adopted in order to describe the sixth of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect inflicted by a non-residential child care provider when the child resided with a parent, guardian or foster care provider. This section includes cross reference to new Sections 31-502.13 through .16, which describe the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect as well as the three agencies eligible to make such a determination.

Factual Basis:

This section is necessary in order to effectively promulgate W&I Code section 10850.4(c), requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided with a parent, guardian or foster care provider. It also functions to meet the disclosure requirements contained in the California Superior Court decision in *Butterfield v. Lightbourne* (see Factual Basis for Current Section 31-502.3 for further information on this court decision). The court decision found that although statute indicates documents to be disclosed when a child resided with a parent, guardian or foster care provider, circumstances prompting disclosure are not limited to instances where the fatal child abuse and/or neglect was inflicted by such a person. Rather, a case of fatal child abuse and/or neglect inflicted by a non-residential child care provider falls within the scope of disclosures required by statute. New Section 31-502.36 must be added in order to provide clear disclosure procedures when fatal child abuse was inflicted by a non-residential child care provider. This circumstance must be distinguished from others in order to ensure that confidential information otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C) is not disclosed regarding the parent, guardian or foster care provider unless it is determined that such person caused or contributed to the abuse and/or neglect that resulted in the child's death. Additionally, new Sections 31-502.13 through.16 must be cross referenced in this regulatory section because county CWS agencies are one of three entities eligible to make a determination of child abuse and/or neglect prior to disclosing documents and, therefore, must be provided clarification on making such a determination.

Handbook following Section 31-502.36

Specific Purpose:

This new handbook section is added in order to provide a **connection of related programs or regulations** by listing the cross reference sections that define the three classifications of non-residential child care providers listed in new Section 31-502.36: Title 22 of the California Code of Regulations (CCR) section 102352(f)(1) defines "family child care," Title 22 of the CCR section 101152(c)(7) defines "child care center," and Health and Safety Code (H&S) section 1596.792 addresses a family day care home that is exempt from licensure.

Factual Basis:

This section is necessary in order to clarify the agencies and individuals to whom new Section 31-502.36 pertains and who are therefore subject to disclosure pursuant to W&I Code section 10850.4(c), which requires the disclosure of specified documents when a child has died as a result of abuse and/or neglect and the child resided with a parent, guardian or foster care provider. Moreover, this clarification is necessary to meet the California Superior Court decision in *Butterfield v. Lightbourne*, which expanded the circumstances indicated in current regulations that require public disclosure of findings and information when a child fatality is the result of abuse/or neglect.

Section 31-502.361 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.361(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Sections 31-502.361(b) and (c) and Handbook

Specific Purpose/Factual Basis:

These sections are adopted to cross reference Sections 31-505.311(b) and (c) and provide the language in handbook.

Section 31-502.361(d)

Specific Purpose:

This section is adopted in order to provide the requirement for county CWS agencies to disclose licensing records for a non-residential child care provider, if in the case file.

Factual Basis:

To the extent that a county CWS agency conducts licensing for non-residential child care providers, disclosure is equivalent to disclosure of licensing records for a foster care provider. If the county does not conduct such licensing, the county is required to refer the requested to the appropriate licensing agency, as addressed in new Section 31-502.363.

Section 31-502.362

Specific Purpose:

This section is adopted in order to indicate additional redactions required in the process of preparing documents for public disclosure pursuant to new Section 31-502.361. Specifically, any information that would identify the parent, guardian or foster care provider must be redacted, unless abuse or neglect by a parent, guardian or foster care provider contributed to the circumstance that resulted in the child's death, as determined by an agency pursuant to new Sections 31-502.13 through .16.

Factual Basis:

This section is necessary in order to clarify and adequately promulgate W&I Code section 10850.4(c), which requires a county to release specified documents when a child's death occurred while living with a parent, guardian or foster care provider. In the scenario presented by new Section 31-502.36, a non-residential day care provider inflicted abuse and/or neglect that resulted in the child's death, prompting the disclosure of records specified in new Section 31-502.361. Because a parent, guardian or foster care provider is not the perpetrator in this case, it must be clarified that case records regarding such individuals shall not be released. This is a critical distinction because in this case, the parent, guardian or foster care provider was not found to be responsible for abuse and/or neglect that resulted in the child fatality. Without such distinction, a county CWS agency runs the risk of unlawfully disclosing documents regarding the parent, guardian or foster care provider that are otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C). This regulation must be adopted to clarify that the only circumstance in which such records are released regarding the parent or guardian is when abuse and/or neglect by a parent or guardian also contributed to or resulted in the child's death.

Section 31-502.363

Specific Purpose:

This section is adopted in order to clarify disclosure procedures for new Section 31-502.361(d), which requires a county to disclose a non-residential child care provider's licensing records when it is determined that a non-residential child care provider is responsible for abuse and/or neglect that resulted in the death of a child. If such records are not contained in the child's case record or maintained by the county CWS agency, this section clarifies that the county CWS agency shall release the documents and information specified in new Sections 31-502.331(a-e) that are available within the case record and shall refer the requesting party to the appropriate licensing/approval agency for additional information or documents.

Factual Basis:

This section is necessary in order to clarify and adequately promulgate W&I Code section 10850.4(c)(3)(A), which requires the release of specific licensing/approval records regarding a foster care provider when a foster care provider has inflicted abuse and/or neglect which resulted in the death of a child. When a child has died as a result of abuse and/or neglect inflicted by a licensed non-residential child care provider, the same disclosure requirement applies because a foster care provider and a licensed non-residential child care provider both require state licensing for the care of children. This section must be adopted to clarify that if such records are not maintained by the county CWS agency custodian of records, the county CWS agency has authority to refer the requesting party to the appropriate licensing/approval agency pursuant to W&I Code section 10850.4(o), which states that W&I Code section 10850.4 shall not be construed as requiring the custodian of records to obtain documents not in the case file.

Section 31-502.37

Specific Purpose:

This section is adopted in order to describe the seventh of seven situations requiring a county CWS agency to disclose specified documents regarding a child fatality that was the result of abuse and/or neglect: abuse or neglect has been determined or substantiated to have resulted the child fatality, but it has not been determined who inflicted the abuse and/or neglect. This section includes cross reference to new Sections 31-502.13 through .16, which describe the conditions that warrant a determination that a child fatality was the result of abuse and/or neglect as well as the three agencies eligible to make such a determination.

Factual Basis:

This section is necessary in order to effectively promulgate W&I Code section 10850.4(c), requiring the disclosure of specified documents when a child fatality was the result of abuse and/or neglect and the child resided with a parent, guardian or foster care provider. It also functions to meet the disclosure requirements contained in the California Superior Court decision in *Butterfield v. Lightbourne* (see Factual Basis for current Section 31-502.3 for further information on this court decision). The court decision found that although statute indicates documents to be disclosed when a child resided with a parent, guardian or foster care provider, circumstances prompting disclosure are not limited to instances where the fatal child abuse and/or neglect was inflicted by such a person. Rather, a case of fatal child abuse and/or neglect inflicted by an unidentified individual falls within the scope of disclosures required by statute. New Section 31-502.37 must be adopted in order to provide clear disclosure procedures when fatal child abuse was inflicted by an unidentified individual. This circumstance must be distinguished from others in order to ensure that confidential information otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C) is not disclosed regarding the parent, guardian or foster care provider unless it is determined that such person caused or contributed to the abuse and/or neglect that resulted in the child's death. Additionally, Sections 31-502.13 through .16 must be cross referenced in this regulatory section because county CWS agencies must make a determination of child abuse and/or neglect prior to disclosing documents and therefore must be provided clarification on making such a determination.

Section 31-502.371 and Handbook

Specific Purpose/Factual Basis:

This section is adopted to cross reference Section 31-505.311 and provide the language in handbook.

Section 31-502.371(a)

Specific Purpose/Factual Basis:

See new Section 31-502.311(a). Specific Purpose and Factual Basis are identical.

Sections 31-502.371(b) and (c) and Handbook

Specific Purpose/Factual Basis:

These sections are adopted to cross reference Sections 31-505.311(b) and (c) and provide the language in handbook.

Section 31-502.372(d)

Specific Purpose:

This section is adopted in order to indicate additional redactions required in the process of preparing documents for public disclosure pursuant to new Section 31-502.371. Specifically, any information that would identify the parent, guardian or foster care provider must be redacted, unless abuse or neglect by a parent, guardian or foster care provider contributed to the circumstance that resulted in the child's death, as determined by an agency pursuant to new Sections 31-502.13 through .16.

Factual Basis:

This section is necessary in order to clarify and adequately promulgate W&I Code section 10850.4(c), which requires a county to release specified documents when a child's death occurred while living with a parent, guardian or foster care provider. In the scenario presented by new Section 31-502.37, an unidentified individual inflicted abuse and/or neglect that resulted in the child's death, prompting the disclosure of records specified in new Section 31-502.371. Because a parent, guardian or foster care provider is not the perpetrator in this case, it must be clarified that case records regarding such individuals shall not be released. This is a critical distinction because in this case, the parent, guardian or foster care provider was not found to be responsible for abuse and/or neglect that resulted in the child fatality. Without such distinction, a county CWS agency runs the risk of unlawfully disclosing documents regarding the parent, guardian, or foster care provider that are otherwise protected under state or federal law pursuant to W&I Code section 10850.4(e)(1)(C). This regulation must be adopted to clarify that the only circumstance in which such records are released regarding the parent or guardian is when abuse and/or neglect by a parent or guardian also contributed to or resulted in the child's death.

Section 31-502.38

Specific Purpose:

This section is adopted to provide the language repealed from current Section 31-502.32, which requires a county, upon receiving public request for information, to notify counsel for any child directly or indirectly related to the deceased child's case record.

Factual Basis:

This adoption is necessary in order to relocate existing language and renumber to a more logical placement. Because Section 31-502.3 is rewritten such that Sections 31-502.31 through .37 address seven specific scenarios involving child fatalities that are the result of abuse and/or neglect, and because the content of Section 31-502.38 applies to all seven, it is logically fitting to place its content within Section 31-502.3 but separate from the procedures for the seven scenarios. The language of this section, in both its current placement and the new placement indicated by this amendment, must be included in regulations as it promulgates W&I Code section 10850.4(f).

b) Identification of Documents Upon Which Department Is Relying

- (1) *Butterfield v. Lightbourne* (Cal.Sup. Dec. 28, 2012, No 37-2011-00097858-CU-MC-CTL)
- (2) Title 42, United States Code section 5106a(b)(2)(B)(x)
- (3) H&S Code section 1596.792
- (4) Penal Code section 11165
- (5) W&I Code section 10850.4
- (6) Title 22, CCR sections 102352(f)(1) and 101152(c)(7)

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, as they expand existing regulations mandated in 2008 pursuant to SB 39. Though it is difficult to determine the full fiscal impact of these regulatory changes, the Department estimates a 10% increase in cases that would be eligible to public disclosure by county CWS agencies. However, because the average number child fatality cases reported from 2008 to 2012 is lower than the number projected in 2007, a 10% increase will have minimal effect, resulting in an estimated 2.5 cases in addition to the 2007 estimate. This results in estimated \$363 increase annually.

d) Statement of Alternatives Considered

No alternatives available. This regulatory package is submitted in response to the California Superior Court decision in *Butterfield v. Lightbourne*, which requires CDSS to amend section 31-502 according to its provisions.

e) Statement of Significant Adverse Economic Impact On Business

The proposed action will not have an economic impact directly affecting businesses. These sections of regulations do not apply to businesses or the State economy.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action indicate which specific documents are required for the disclosure of a child fatality when it results from abuse and/or neglect, and differentiates which types of documents are released when the child resided with a parent/guardian rather than a foster care provider. The proposed regulations will benefit the public by offering more complete and accurate child fatality reporting information and, thereby, create better government transparency.

g) Benefits Anticipated from Regulatory Action

The adoption of the proposed amendments will provide improved disclosure to the public of findings and information regarding child fatalities that were the result of abuse and/or neglect.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.